(16,866.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 292.

HOSEA B. TULLIS, PLAINTIFF IN ERROR,

vs.

THE LAKE ERIE AND WESTERN RAILROAD COMPANY.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

INDEX.

	Original.	Print.
Certificate of the United States circuit court of appeals	1	1
Statement	1	1
Section 1 of act of legislature of Indiana, March 4, 1893	1	1
Question certified	2	1
Clerk's certificate	3	2

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., SEPTEMBER 12, 1898.

1 In the United States Circuit Court of Appeals for the Seventh Circuit, January Session, A. D. 1898.

HOSEA B. TULLIS, Plaintiff in Error, *vs.* THE LAKE ERIE & WESTERN RAILroad Company.	No. 455. Error to the Circuit Court of the United States for the District of Indiana.

Certificate to Supreme Court.

Before Woods, Jenkins, and Showalter, circuit judges.

In this case, duly argued and submitted to this court, there arises a question of law concerning which this court desires the instruction of the Supreme Court of the United States. The action was brought by the plaintiff in error to recover damages for an injury suffered while in the employment of the defendant in error, caused by a negligent act of a fellow-servant, for which the defendant in error is alleged to be responsible by force of an act of the legislature of Indiana approved by the governor of the State March 4, 1893. The first section of the act reads as follows:

"1. That every railroad or other corporation, except municipal, operating in this State, shall be liable for damages for personal injury suffered by any employé while in its service, the employé so injured being in the exercise of due care and diligence, in the following cases:

"*First.* When such injury is suffered by reason of any defect in the condition of ways, works, plant, tools and machinery connected with, or in use in the business of such corporation, when
2 such defect was the result of negligence on the part of the corporation, or some person entrusted by it with the duty of keeping such way, works, plant, tools or machinery in proper condition.

"*Second.* Where such injury resulted from the negligence of any person in the service of such corporation, to whose order or direction the injured employé at the time of the injury was bound to conform, and did conform.

"*Third.* Where such injury resulted from the act or omission of any person done or made in obedience to any rule, regulation or by-law of such corporation, or in obedience to the particular instructions given by any person delegated with the authority of the corporation in that behalf.

"*Fourth.* Where such injury was caused by the negligence of any person in the service of such corporation who has charge of any signal, telegraph office, switch-yard, shop, round-house, locomotive engine or train upon a railway, or where such injury was caused by the negligence of any person, co-employé or fellow-servant engaged in the same common service in any of the several departments of the service of any such corporation, the said person, co-employé or fellow-servant, at the time acting in the place, and

performing the duty of the corporation in that behalf, and the person so injured, obeying or conforming to the order of some superior at the time of such injury, having the authority to direct; that nothing herein shall be construed to abridge the liability of the corporation under existing laws."

For the entire act reference is made to Session Laws of 1893, page 294, Burns' Annotated Indiana Statutes, Revision of 1894, paragraphs 7083 to 7087, inclusive.

The Lake Erie & Western Railroad Company is a corporation of the State of Illinois owning and operating a railroad extending from Peoria, Illinois, into and through the State of Indiana. It is contended that the statute referred to is invalid because inconsistent with the fourteenth amendment of the Constitution of the United States. If it be invalid the declaration shows no cause of action, and the errors alleged to have been committed at the trial become immaterial. The opinion of this court is that material error was committed at the trial for which the judgment below should be reversed if the statute mentioned is valid, and that if the statute mentioned is invalid the judgment should be affirmed. The question whether that statute is valid or violates the fourteenth amendment of the Constitution of the United States the court hereby orders certified and submitted to the Supreme Court of the United States for its proper decision.

WM. A. WOODS.
JAS. G. JENKINS.
JOHN W. SHOWALTER.

3 United States Circuit Court of Appeals for the Seventh Circuit.

I, Oliver T. Morton, clerk of the United States circuit court of appeals for the seventh circuit, do hereby certify that the foregoing printed pages, numbered from 1 to 2, inclusive, contain a true copy of the certificate of the United States circuit court of appeals for the seventh circuit to the Supreme Court of the United States in the case of Hosea B. Tullis *vs.* The Lake Erie and Western Railroad Company, No. 455, October term, 1897, as the same remains upon the files and records of said United States circuit court of appeals for the seventh circuit.

Seal United States Circuit Court of Appeals, Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of the said United States circuit court of appeals for the seventh circuit, at the city of Chicago, this 13th day of April, A. D. 1898.

OLIVER T. MORTON,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

Endorsed on cover: Case No. 16,866. U. S. circuit court of appeals, seventh circuit. Term No., 292. Hosea B. Tullis, plaintiff in error, *vs.* The Lake Erie & Western Railroad Company. (Certificate.) Filed May 2nd, 1898.